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FILED IN UNITED STATES DISTRICT
COURT, DISTRICT OF UTAH

SEP -1 2004

BY MARKUS B. ZIMMER, CLERK
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IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
CENTRAL DIVISION

HOLLI LUNDAHL,

Plaintiff,

vs.

CNA FINANCIAL CORP., et al.,

Defendants.

ORDER DISMISSING CASE

Bankruptcy Case No. 03-21660

Adversary Proceeding No. 03-2336

Case No. 2:04 cv 84 PGC

Ms. Lundahl filed this motion to withdraw the reference to the Bankruptcy Court on January 28, 2004. The Bankruptcy Court dismissed Ms. Lundahl's underlying bankruptcy case on December 19, 2003, and dismissed this adversary proceeding on December 22, 2003, remanding the matter to the Fourth District Court in Utah. The court will interpret Ms. Lundahl's pleadings as an appeal of the Bankruptcy Court's ruling dismissing this case without prejudice.

Ms. Lundahl filed a notice of appeal on January 5, 2004, and on February 3, 2004, the Bankruptcy Appellate Panel dismissed her appeal for failure to prosecute.

On January 28, 2004, Ms. Lundahl filed the pending motion to withdraw the reference. The court dismisses this proceeding for three reasons: (1) failure to properly complete service; (2) failure to properly prosecute her appeal; and (3) because the Bankruptcy Court correctly dismissed this adversary proceeding.

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Motion to Withdraw the Reference

Over a month after the Bankruptcy Court dismissed this adversary proceeding, and after the Bankruptcy Appeals Panel of the Tenth Circuit dismissed her appeal, Ms. Lundahl filed a motion in this court to withdraw the reference to Bankruptcy Court. Because this proceeding was not before the Bankruptcy Court at the time she filed this motion, this motion is DENIED as moot.

Service of Process

Ms. Lundahl failed to properly serve the defendants in this case. Based on the court records it appears none of the defendant's in this adversary proceeding ever received proper service of process. Ms. Lundahl filed no motions seeking extensions of time for service and provides no explanation for this lapse. Though this court typically gives deference to parties proceeding *pro se*, Ms. Lundahl has filed *thirty* lawsuits in federal district court in Utah. By now she should be familiar with the mandates of Rule 4, and accordingly the claims against these unserved defendants are dismissed without prejudice.¹

Prosecution of Appeal

Ms. Lundahl filed this appeal on January 5, 2004. Ms. Lundahl did not file a timely designation of the items to be included in the record on appeal and a statement of the issues to be presented on appeal within the required ten days of filing of the notice of her appeal.² Because Ms. Lundahl has failed to properly prosecute this appeal in this court the court dismisses this case without prejudice for failure to prosecute.

¹ See Fed.R.Civ.Pro. 4; *see also* Fed.R.Bank.Pro. 7004(a).

² See Fed.R.Bank.Pro. 8006.

Bankruptcy Court's Ruling

The Bankruptcy Court properly dismissed Ms. Lundahl's adversary proceeding in this case. Once the Bankruptcy Court dismissed the underlying bankruptcy proceeding, it lacked the jurisdiction to hear this adversary proceeding.³ Notably the Bankruptcy Court dismissed this proceeding without prejudice, and this court does as well.

Motion to Extend Time for Plaintiff to Respond and Motion to Continue or Stay All Proceedings

On May 3, 2004, Ms. Lundahl sought a stay of all proceedings in this court while she pursued her pending appeal before the Tenth Circuit. The court DENIES this motion finding no good cause.

Conclusion

The court DENIES the motion to withdraw the reference in this case as untimely (#2-1). The court DENIES the motion to stay all proceedings (#4-1). The court DISMISSES this case without prejudice for failure to prosecute. This case is remanded to state court.

SO ORDERED.

DATED this 1st day of ~~August~~^{September}, 2004.

BY THE COURT:



Paul G. Cassell
United States District Judge

³ See *Smith v. Commercial Banking Corp.*, (In re *Smith*), 866 F.2d 576, 580 (3rd Cir. 1989); *in re Statistical Tabulatin Corp.*, 60 F.3d 1286, 1289 (7th Cir. 1995); *Querner v. Querner* (In re *Querner*), 7 F.3d 1199, 1201-02 (5th Cir. 1993).

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United States District Court
for the
District of Utah
September 3, 2004

* * CERTIFICATE OF SERVICE OF CLERK * *

Re: 2:04-cv-00084

True and correct copies of the attached were either mailed, faxed or e-mailed by the clerk to the following:

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